DO WE NEED A NEW MENTAL HEALTH ACT?

*** Dr.Vijayamahantesh.S.N ** Dr.Vijayanath.V**

Abstract:

The Mental Health Act was enacted in 1987 to amend the law regarding the treatment and care of mentally ill persons, it replaces the Indian Lunacy Act of 1912 and came into effect from April 1993.It consists of ten chapters which give information ranging from definitions of some terms, to various guidelines to be followed in establishing psychiatric hospitals, to prescribing the penalties for infringement of provisions of the Act. Chapter 3 and 4 of MHA lays down the guidelines for admission of mentally ill persons only to psychiatric hospitals which have acquired the license from the authorities mentioned in the Act. This is not appropriate even in normal situations let alone in case of emergency situations. The paper highlights the probable reason for decreasing number of psychiatrists in India and also the need for amendment of the Mental Health Act in respect to chapter 2 to 5 of the Act.

Key words: Mental Health Act; Mental illness; Admission; Treatment;

Introduction:

The Mental Health Act (MHA) 1987, was enacted to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property &affair, and for matter connected therewith[1].

The Mental Health Act came into force with effect from 01-04-1993 in all states and union territories of India[2]. It replaces the Indian Lunacy Act 1912, which had earlier replaced the Indian Lunatic Asylums Act of 1858

The mental Health Act is divided in to 10 chapters consisting of 98 sections[3].

CHAPTER 1: It deals with various definitions. The act uses the term "mentally ill person" instead of more offensive "lunatic" and "mentally ill prisoner" instead of "criminal lunatic". Also the term "psychiatric hospital" is used in place of "mental hospital".

A mentally ill person is defined by the act as a person who is in need of treatment by reason of any mental disorder other than mental retardation.

CHAPTER 2: It deals with the procedures of establishment of mental health authorities at the centre and state levels.

CHAPTER 3: It lays down the guidelines for establishment and maintenance of psychiatric hospitals and nursing homes. Private psychiatric hospitals and nursing homes can be run by only on a valid license which has to be subsequently renewed every 5 years. An inspecting officer will periodically inspect the hospital or nursing home to check for any irregularities

* Assistant professor, S.Nijalingappa Medical College, Bagalkot.

** Associate Professor, S.S.Institute of Medical Sciences & Research Centre, Davangere, Karnataka

CHAPTER 4: It deals with the procedures of admission and detention in psychiatric hospitals.

CHAPTER 5: Deals with inspection, discharge, leave of absence and removal of mentally ill person.

CHAPTER 6: Deals with management of properties of a mentally ill person. It deals with issues regarding appointment of manager or guardian to look after the mentally ill person as well as his properties.

CHAPTER 7: Deals with liability to meet the cost of maintenance of mentally ill person detained in psychiatric hospitals.

CHAPTER 8: Deals with issues relating to the protection of human rights of mentally ill persons.

CHAPTER 9: Outlines the penalties for infringement of guidelines.

CHAPTER 10: Deals with miscellaneous matters.

Discussion:

Fundamental Flaws Of Mha:

Although an improvement on its predecessor, the 1912 lunacy act, the MHA of 1987 suffers from some fundamental flaws. It appears to have been drafted on the basic premise that the mentally ill are violent, that they are a danger to themselves and others, that the mental illness is incurable and the subject loses his/her reasoning and the power of judgment and therefore loses his/her fundamental rights under the constitution.

The attitude of the society towards persons afflicted with mental illness has changed considerably and it is now realized that no stigma should be attached to such illness as it is curable, particularly, when it is diagnosed at an early stage Today two decades later, we know that mental illness is just like any other illness. Thus, mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible[4].

Mental disease is due to chemical disturbances in the brain, which can be picked up by sophisticated scans and corrected with pharmacological treatment and an understanding, loving supportive milieu which itself helps the brain correct its chemistry. In a majority of cases all the symptoms can be brought under control just as in the case of diabetes, hypertension etc. In many cases total cure too can be achieved and we have today many people functioning normally and doing their jobs while taking medicines for the mentally illness just like any other disease[5].

The MHA does not provide them the freedom of getting admitted to any hospital. Chapter 3 and 4 of MHA condemns them to be admitted only in the psychiatric hospitals. This is irrelevant even in the normal circumstances leave alone the situation in cases of mass disasters like the tsunami disaster in which three patients were rushed to private nursing home in Cuddalore for acute worsening of their psychiatric illness. It was with great reluctance that the nursing home agreed to admit them. Because the nursing home did not have license to treat the mentally ill; both the doctor and hospital risked losing their right to practice for they were acting illegally and could be prosecuted under MHA even though they

occupied moral high ground.

Thus under MHA these patients risk losing their fundamental rights guaranteed by the constitution of India. This has to change. The expected changes will come only when there is demand from the public for the needy change. It depends on the awareness among the general public. A very few will be suffering from such severe, emergency psychiatric condition and among them hardly anyone will ask for changes. The other counter part of the scenario is Psychiatrist, who are repeatedly recommending through their organization, which has not yet fetched any positive reply from the Government authorities.

Most of the mental illnesses can be cured or controlled in less than 90 days and the patients continue to keep well with the medication and the provisions of MHA are needed only for 5% who remain chronically mentally ill despite treatment and need to be protected from exploitation by unscrupulous elements.

It must be remembered that a mentally ill person has an inherent right to ask for repeated examination of his mental condition in order to secure his release from hospital if found reasonably cured.6 The Mental Health Act thus provides the right to discharge when he is cured but does not provide the right to get admitted in a hospital of their choice or to be treated by psychiatrist of their choice. And at least in emergency service the MHA has to authorize or make some arrangements for the immediate treatment as it is done in other cases as first aid. This first aid has to be done to relieve the violence, so that the relatives/ attendants can transport the patient to psychiatric nursing home.

Role Of Private Sector:

A second basic flaw with the MHA 1987 is that it is totally divorced from reality and perhaps this is so because it was drafted by the law givers and government psychiatrists who were probably not in touch with ground realities in private psychiatry. Importantly it is the private sector hospitals which cater to the bulk of the mentally ill needing hospitalization.

As in all branches of medicine in the field of psychiatry also the private has more hospital beds than the government. The beds from Government sector available nation-wide are around 20000, while in the private sector there are around two Lakh psychiatric beds.

The MHA is very lax on government general hospitals and mental hospitals but chapter 3 of MHA bars private nursing homes from treating the mentally ill without license and to get a valid license empowering one to run a private hospital for the mentally ill, one has to satisfy impossible criteria. For example, one clinical psychologist has to be there every ten beds. But India has only 700 psychologists. Even though Indian Psychiatric Society in the year 1989 has recommended a code of ethics for psychiatrists which states that patient welfare is of paramount concern to psychiatrist and no psychiatrist should refuse to treat in emergency conditions[7]. But the number of psychiatrists in India is very less for our population. In other words, most of the mentally ill being treated today in private nursing homes are being treated illegally!

With just about 3000 psychiatrists for our billion populations there is a need to retain every single one of our psychiatrists. However, because of the obstacles created by MHA 1987 fresh psychiatrists have no choice but to emigrate to the west where one can practice ones profession with peace of mind. Because the government does not have jobs for all of them and they can not start their own nursing home as not only is the license so wrapped in the red tape that it takes years to get and its provisions are just impossible to fulfill.

The WHO and all the mental health professionals have been calling for inclusion to the basis of treatment of mental illness; that the entire stigma be removed and awareness programmes be started so that society at large views mentally illness as no different from other illnesses. Finally, the certification of the mentally ill person regarding his mental illness has to be done by a psychiatrist only. This is because it is beyond the expertise of any other specialty other than psychiatrist. This has to be stressed in amending the new Law.

Conclusion:

Hence considering all the above issues of MHA especially with regards to the rights of mentally ill persons regarding their admission/ emergency treatment aspect and also with respect to the criteria to offer a license to a psychiatrist one can conclude that the situation needs urgent modifications in the existing MHA act of 1987 to make the mentally ill person live more comfortably just like any other person and enjoy the rights of the constitution.

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